The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. UDALL of Colorado. Mr. Speaker, as a member of the Air Force Academy's Board of Visitors, I have been participating in a meeting of that board here in Washington, DC.

Earlier today, I left the floor to return to that meeting and as a result was not present to vote on rollcall No. 976, on the motion to suspend the rules and pass H. Res. 549, recognizing the importance of America's Waterway Watch program.

Had I been present for that vote, I would have voted ''yea.''

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate had agreed to a resolution of the House of the following title.

H. Con. Res. 193. Concurrent resolution recognizing all hunters across the United States for their continued commitment to safety.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. RES. 106.

Mr. LARSEN of Washington. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H. Res. 106.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

RESTORE ACT OF 2007

Mr. CONYERS. Mr. Speaker, pursuant to House Resolution 746, I call up the bill (H.R. 3773) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3773

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007'' or ''RESTORE Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

Section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES

''SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICATIONS.—Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not United States persons and are not located within the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

''(b) COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

''(1) an order approved in accordance with section 105 or 105B; or

''(2) an emergency authorization in accordance with section 105 or 105C.''.

SEC. 3. PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES

''SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly apply to a judge of the court established under section 103(a) for an ex parte order, or the extension of an order, authorizing for a period of up to one year the acquisition of communications of persons that are reasonably believed to be located outside the United States and not United States persons for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting those persons.

''(b) APPLICATION INCLUSIONS.—An application under subsection (a) shall include—

''(1) a certification by the Director of National Intelligence and the Attorney General that—

''(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

''(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

''(D) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

''(2) a description of—

''(A) the procedures that will be used by the Director of National Intelligence and the Attorney General during the duration of the order to determine that there is a reasonable belief that the targets of the acquisition are persons that are located outside the United States and not United States persons;

''(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;

''(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

''(D) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States.

''(c) SPECIFIC PLACE NOT REQUIRED.—An application under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

''(d) REVIEW OF APPLICATION.—Not later than 15 days after a judge receives an application under subsection (a), the judge shall review such application and shall approve the application if the judge finds that—

''(1) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;

''(2) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

''(3) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States.

''(e) ORDER.—

''(1) IN GENERAL.—A judge approving an application under subsection (d) shall issue an order—

''(A) authorizing the acquisition of the contents of the communications as requested, or as modified by the judge;

''(B) requiring the communications service provider or custodian, or officer, employee, or agent of such service provider or custodian, who has authorized access to the information, facilities, or technical assistance necessary to accomplish the acquisition to provide such information, facilities, or technical assistance necessary to accomplish the

acquisition and to produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition;

''(C) requiring such communications service provider, custodian, officer, employee, or agent, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

''(D) directing the Federal Government to—

''(i) compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order; and

''(ii) provide a copy of the portion of the order directing the person to comply with the order to such person; and

''(E) directing the applicant to follow—

''(i) the procedures referred to in subsection (b)(2)(A) as proposed or as modified by the judge;

''(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

''(iii) the guidelines referred to in subsection (b)(2)(D) as proposed or as modified by the judge.

''(2) FAILURE TO COMPLY.—If a person fails to comply with an order issued under paragraph (1), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the order. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

''(3) LIABILITY OF ORDER.—Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with an order issued under this subsection.

''(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.

''(5) ASSESSMENT OF COMPLIANCE WITH MINIMIZATION PROCEDURES.—At or before the end of the period of time for which an acquisition is approved by an order or an extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(E)(ii) and the guidelines referred to in paragraph (1)(E)(iii) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.

Section 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES

''SEC. 105C. (a) APPLICATION AFTER EMERGENCY AUTHORIZATION.—As soon as is practicable, but not more than 7 days after the Director of National Intelligence and the Attorney General authorize an acquisition under this section, an application for an order authorizing the acquisition in accordance with section 105B shall be submitted to the judge referred to in subsection (b)(2) of this section for approval of the acquisition in accordance with section 105B.

''(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information for a period of not more than 45 days if—

''(1) the Director of National Intelligence and the Attorney General jointly determine that—

''(A) an emergency situation exists with respect to an authorization for an acquisition under section 105B before an order approving the acquisition under such section can with due diligence be obtained;

''(B) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

''(C) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(D) there are reasonable procedures in place for determining that the acquisition of foreign intelligence information under this section will be acquired by targeting only persons that are reasonably believed to be located outside the United States and not United States persons;

''(E) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(F) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e));

''(G) minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h); and

''(H) there are guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States; and

''(2) the Director of National Intelligence and the Attorney General, or their designees, inform a judge having jurisdiction to approve an acquisition under section 105B at the time of the authorization under this section that the decision has been made to acquire foreign intelligence information.

''(c) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—Pursuant to an authorization of an acquisition under this section, the Attorney General may direct a communications service provider, custodian, or an officer, employee, or agent of such service provider or custodian, who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish such acquisition to—

''(1) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and

''(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.''.

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105C the following new section:

''OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES

''SEC. 105D. (a) APPLICATION; PROCEDURES; ORDERS.—Not later than 7 days after an application is submitted under section 105B(a) or an order is issued under section 105B(e), the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress—

''(1) in the case of an application, a copy of the application, including the certification made under section 105B(b)(1); and

''(2) in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E).

''(b) QUARTERLY AUDITS.—

''(1) AUDIT.—Not later than 120 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Inspector General of the Department of Justice shall complete an audit on the implementation of and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a) the results of such audit, including, for each order authorizing the acquisition of foreign intelligence under section 105B—

''(A) the number of targets of an acquisition under such order that were later determined to be located in the United States;

''(B) the number of persons located in the United States whose communications have been acquired under such order;

''(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and

''(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

''(2) REPORT.—Not later than 30 days after the completion of an audit under paragraph (1), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report containing the results of such audit.

''(c) COMPLIANCE REPORTS.—Not later than 60 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report concerning acquisitions under section 105B during the previous 120-day period. Each report submitted under this section shall include a description of any incidents of non-compliance with an order issued under section 105B(e), including incidents of non-compliance by—

''(1) an element of the intelligence community with minimization procedures referred to in section 105B(e)(1)(E)(i);

''(2) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(ii);

''(3) an element of the intelligence community with guidelines referred to in section 105B(e)(1)(E)(iii); and

''(4) a person directed to provide information, facilities, or technical assistance under such order.

''(d) REPORT ON EMERGENCY AUTHORITY.—The Director of National Intelligence and the Attorney General shall annually submit to the appropriate committees of Congress a report containing the number of emergency authorizations of acquisitions under section 105C and a description of any incidents of non-compliance with an emergency authorization under such section.

''(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Permanent Select Committee on Intelligence of the House of Representatives;

''(2) the Select Committee on Intelligence of the Senate; and

''(3) the Committees on the Judiciary of the House of Representatives and the Senate.''.

SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(g) In any case where the court established under subsection (a) or a judge of such court is required to review a matter under this Act, the court may, at the discretion of the court, sit en banc to review such matter and issue any orders related to such matter.''.

SEC. 7. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

(a) AUDIT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall complete an audit of all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program referred to by the President in a radio address on December 17, 2005. Such audit shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(b) REPORT.—

(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.

SEC. 8. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

(a) RECORD-KEEPING SYSTEM.—The Director of National Intelligence and the Attorney General shall jointly develop and maintain a record-keeping system that will keep track of—

(1) the instances where the identity of a United States person whose communications were acquired was disclosed by an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) that collected the communications to other departments or agencies of the United States; and

(2) the departments and agencies of the Federal Government and persons to whom such identity information was disclosed.

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).

SEC. 9. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

There are authorized to be appropriated the Department of Justice, for the activities of the Office of the Inspector General, the Office of Intelligence Policy and Review, and other appropriate elements of the National Security Division, and the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

(1) applications and other submissions to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 7; and

(3) the record-keeping system and reporting requirements under section 8.

SEC. 10. REITERATION OF FISA AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C and inserting the following new items:

''Sec. 105A. Clarification of electronic surveillance of non-United States persons outside the United States.

''Sec. 105B. Procedure for authorizing acquisitions of communications of non-United States persons located outside the United States.

''Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.

''Sec. 105D. Oversight of acquisitions of communications of persons located outside of the United States.''.

(b) SECTION 103(e) OF FISA.—Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or''; and

(2) in paragraph (2), by striking ''105B(h) or''.

(c) REPEAL OF CERTAIN PROVISIONS OF THE PROTECT AMERICA ACT.—Sections 4 and 6 of the Protect America Act (Public Law 110–55) are hereby repealed.

SEC. 12. SUNSET; TRANSITION PROCEDURES.

(a) SUNSET OF NEW PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on December 31, 2009—

(A) sections 105A, 105B, 105C, and 105D of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) are hereby repealed; and

(B) the table of contents in the first section of such Act is amended by striking the items relating to sections 105A, 105B, 105C, and 105D.

(2) ACQUISITIONS AUTHORIZED PRIOR TO SUNSET.—Any authorization or order issued under section 105B of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2009, shall continue in effect until the date of the expiration of such authorization or order.

(b) ACQUISITIONS AUTHORIZED PRIOR TO ENACTMENT.—

(1) EFFECT.—Notwithstanding the amendments made by this Act, an authorization of the acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) made before the date of the enactment of this Act shall remain in effect until the date of the expiration of such authorization or the date that is 180 days after such date of enactment, whichever is earlier.

(2) REPORT.—Not later than 30 days after the date of the expiration of all authorizations of acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (as added by Public Law 110–55) made before the date of the enactment of this Act in accordance with paragraph (1), the Director of National Intelligence and the Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

(A) the number of targets of an acquisition under section 105B of such Act (as in effect on the day before the date of the enactment of this Act) that were later determined to be located in the United States;

(B) the number of persons located in the United States whose communications have been acquired under such section;

(C) the number of reports disseminated containing information on a United States person that was collected under such section;

(D) the number of applications submitted for approval of electronic surveillance under section 104 of such Act based upon information collected pursuant to an acquisition authorized under section 105B of such Act (as in effect on the day before the date of the enactment of this Act); and

(E) a description of any incidents of non-compliance with an authorization under such section, including incidents of non-compliance by—

(i) an element of the intelligence community with procedures referred to in subsection (a)(1) of such section;

(ii) an element of the intelligence community with minimization procedures referred to in subsection (a)(5) of such section; and

(iii) a person directed to provide information, facilities, or technical assistance under subsection (e) of such section.

(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ''intelligence community'' has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

The SPEAKER pro tempore. Pursuant to House Resolution 746, in lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 110–385, modified by the amendment printed in part B of the report, is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 3773

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007'' or ''RESTORE Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

Section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES

''SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICATIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, a court order is not required for electronic surveillance directed at the acquisition of the contents of any communication between persons that are not known to be United States persons and are reasonably believed to be located outside the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

''(2) TREATMENT OF INADVERTENT INTERCEPTIONS.—If electronic surveillance referred to in paragraph (1) inadvertently collects a communication in which at least one party to the communication is located inside the United States or is a United States person, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 7 days unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

''(b) COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

''(1) an order approved in accordance with section 105 or 105B; or

''(2) an emergency authorization in accordance with section 105 or 105C.''.

SEC. 3. ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly apply to a judge of the court established under section 103(a) for an ex parte order, or the extension of an order, authorizing for a period of up to one year the acquisition of communications of persons that are reasonably believed to be located outside the United States and not United States persons for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting those persons.

''(b) APPLICATION INCLUSIONS.—An application under subsection (a) shall include—

''(1) a certification by the Director of National Intelligence and the Attorney General that—

''(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States who may be communicating with persons inside the United States;

''(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

''(D) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

''(2) a description of—

''(A) the procedures that will be used by the Director of National Intelligence and the Attorney General during the duration of the order to determine that there is a reasonable belief that the persons that are the targets of the acquisition are located outside the United States and not United States persons;

''(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;

''(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

''(D) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States.

''(c) SPECIFIC PLACE NOT REQUIRED.—An application under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

''(d) REVIEW OF ''APPLICATION; APPEALS.—

''(1) REVIEW OF APPLICATION.—Not later than 15 days after a judge receives an application under subsection (a), the judge shall review such application and shall approve the application if the judge finds that—

''(A) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;

''(B) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

''(C) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition

is to acquire the communications of a specific United States person reasonably believed to be located in the United States.

''(2) TEMPORARY ORDER; APPEALS.—

''(A) TEMPORARY ORDER.—A judge denying an application under paragraph (1) may, at the application of the United States, issue a temporary order to authorize an acquisition under section 105B in accordance with the application submitted under subsection (a) during the pendency of any appeal of the denial of such application.

''(B) APPEALS.—The United States may appeal the denial of an application for an order under paragraph (1) or a temporary order under subparagraph (A) in accordance with section 103.

''(e) ORDER.—

''(1) IN GENERAL.—A judge approving an application under subsection (d) shall issue an order—

''(A) authorizing the acquisition of the contents of the communications as requested, or as modified by the judge;

''(B) requiring the communications service provider or custodian, or officer, employee, or agent of such service provider or custodian, who has authorized access to the information, facilities, or technical assistance necessary to accomplish the acquisition to provide such information, facilities, or technical assistance necessary to accomplish the acquisition and to produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition;

''(C) requiring such communications service provider, custodian, officer, employee, or agent, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

''(D) directing the Federal Government to—

''(i) compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order;

''(ii) provide a copy of the portion of the order directing the person to comply with the order to such person; and

''(iii) a certification stating that the acquisition is authorized under this section and that all requirements of this section have been met; and''.

''(E) directing the applicant to follow—

''(i) the procedures referred to in subsection (b)(2)(A) as proposed or as modified by the judge;

''(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

''(iii) the guidelines referred to in subsection (b)(2)(D) as proposed or as modified by the judge.

''(2) FAILURE TO COMPLY.—If a person fails to comply with an order issued under paragraph (1), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the order. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

''(3) LIABILITY OF ORDER.—Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with an order issued under this subsection.

''(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.

''(5) ASSESSMENT OF COMPLIANCE WITH COURT ORDER.—At or before the end of the period of time for which an acquisition is approved by an order or an extension under this section, the court established under section 103(a) shall, not less frequently than once each quarter, assess compliance with the procedures and guidelines referred to in paragraph (1)(E) and review the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

Section 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105C. (a) APPLICATION AFTER EMERGENCY AUTHORIZATION.—As soon as is practicable, but not more than 7 days after the Director of National Intelligence and the Attorney General authorize an acquisition under this section, an application for an order authorizing the acquisition in accordance with section 105B shall be submitted to the judge referred to in subsection (b)(2) of this section for approval of the acquisition in accordance with section 105B.

''(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) for a period of not more than 45 days if—

''(1) the Director of National Intelligence and the Attorney General jointly determine that—

''(A) an emergency situation exists with respect to an authorization for an acquisition under section 105B before an order approving the acquisition under such section can with due diligence be obtained;

''(B) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States who may be communicating with persons inside the United States;

''(C) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(D) there are procedures in place that will be used by the Director of National Intelligence and the Attorney General during the duration of the authorization to determine if there is a reasonable belief that the persons that are the targets of the acquisition are located outside the United States and not United States persons;

''(E) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(F) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e));

''(G) minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h); and

''(H) there are guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

''(2) the Director of National Intelligence and the Attorney General, or their designees, inform a judge having jurisdiction to approve an acquisition under section 105B at the time of the authorization under this section that the decision has been made to acquire foreign intelligence information.

''(c) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—

''(1) DIRECTIVE.—Pursuant to an authorization of an acquisition under this section, the Attorney General may direct a communications service provider, custodian, or an officer, employee, or agent of such service provider or custodian, who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish such acquisition to—

''(A) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.

''(2) PARAMETERS; CERTIFICATIONS.—The Attorney General shall provide to any person directed to provide assistance under paragraph (1) with—

''(A) a document setting forth the parameters of the directive;

''(B) a certification stating that—

''(i) the emergency authorization has been issued pursuant to this section;

''(ii) all requirements of this section have been met;

''(iii) a judge has been informed of the emergency authorization in accordance with subsection (b)(2); and

''(iv) an application will be submitted in accordance with subsection (a); and

''(C) a certification that the recipient of the directive shall be compensated, at the prevailing rate, for providing information, facilities, or assistance pursuant to such directive.''.

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105C the following new section:

''OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105D. (a) APPLICATION; PROCEDURES; ORDERS.—Not later than 7 days after an application is submitted under section 105B(a) or an order is issued under section 105B(e), the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress—

''(1) in the case of an application—

''(A) a copy of the application, including the certification made under section 105B(b)(1); and

''(B) a description of the primary purpose of the acquisition for which the application is submitted; and

''(2) in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E).

''(b) REGULAR AUDITS.—

''(1) AUDIT.—Not later than 120 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Inspector General of the Department of Justice shall complete an audit on the implementation of and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a) the results of such audit, including, for each order authorizing the acquisition of foreign intelligence under section 105B—

''(A) the number of targets of an acquisition under such order that were later determined to be located in the United States;

''(B) the number of persons located in the United States whose communications have been acquired under such order;

''(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and

''(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

''(2) REPORT.—Not later than 30 days after the completion of an audit under paragraph (1), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report containing the results of such audit.

''(c) COMPLIANCE REPORTS.—Not later than 60 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report concerning acquisitions under section 105B during the previous period. Each report submitted under this section shall include a description of any incidents of non-compliance with an order issued under section 105B(e), including incidents of non-compliance by—

''(1) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(i);

''(2) an element of the intelligence community with minimization procedures referred to in section 105B(e)(1)(E)(ii);

''(3) an element of the intelligence community with guidelines referred to in section 105B(e)(1)(E)(iii); and

''(4) a person directed to provide information, facilities, or technical assistance under such order.

''(d) REPORT ON EMERGENCY AUTHORITY.—The Director of National Intelligence and the Attorney General shall annually submit to the appropriate committees of Congress a report containing the number of emergency authorizations of acquisitions under section 105C and a description of any incidents of non-compliance with an emergency authorization under such section.

''(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Permanent Select Committee on Intelligence of the House of Representatives;

''(2) the Select Committee on Intelligence of the Senate; and

''(3) the Committees on the Judiciary of the House of Representatives and the Senate.''.

SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(g) In any case where the court established under subsection (a) or a judge of such court is required to review a matter under this Act, the court may, at the discretion of the court, sit en banc to review such matter and issue any orders related to such matter.''.

SEC. 7. FOREIGN INTELLIGENCE SURVEILLANCE COURT MATTERS.

(a) AUTHORITY FOR ADDITIONAL JUDGES.—Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) in paragraph (1) (as so designated)—

(A) by striking ''11'' and inserting ''15''; and

(B) by inserting ''at least'' before ''seven of the United States judicial circuits''; and

(3) by designating the second sentence as paragraph (3) and indenting such paragraph, as so designated, two ems from the left margin.

(b) CONSIDERATION OF EMERGENCY APPLICATIONS.—Such section is further amended by inserting after paragraph (1) (as designated by subsection (a)(1)) the following new paragraph:

''(2) A judge of the court shall make a determination to approve, deny, or modify an application submitted pursuant to section 105(f), section 304(e), or section 403 not later than 24 hours after the receipt of such application by the court.''.

SEC. 8. REITERATION OF FISA AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 9. ENHANCEMENT OF ELECTRONIC SURVEILLANCE AUTHORITY IN WARTIME AND OTHER COLLECTION.

Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are amended by striking ''Congress'' and inserting ''Congress or an authorization for the use of military force described in section 2(c)(2) of the War Powers Resolution (50 U.S.C. 1541(c)(2)) if such authorization contains a specific authorization for foreign intelligence collection under this section, or if the Congress is unable to convene because of an attack upon the United States.''.

SEC. 10. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

(a) AUDIT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall complete an audit of all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program referred to by the President in a radio address on December 17, 2005. Such audit shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(b) REPORT.—

(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.

SEC. 11. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

(a) RECORD-KEEPING SYSTEM.—The Director of National Intelligence and the Attorney General shall jointly develop and maintain a record-keeping system that will keep track of—

(1) the instances where the identity of a United States person whose communications were acquired was disclosed by an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) that collected the communications to other departments or agencies of the United States; and

(2) the departments and agencies of the Federal Government and persons to whom such identity information was disclosed.

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).

SEC. 12. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

(a) IN GENERAL.—There are authorized to be appropriated the Department of Justice, for the activities of the Office of the Inspector General, the appropriate elements of the National Security Division, and the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

(1) applications and other submissions to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 10; and

(3) the record-keeping system and reporting requirements under section 11.

(b) ADDITIONAL PERSONNEL FOR PREPARATION AND CONSIDERATION OF APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH.—

(1) NATIONAL SECURITY DIVISION OF THE DEPARTMENT OF JUSTICE.—

(A) ADDITIONAL PERSONNEL.—The National Security Division of the Department of Justice is hereby authorized such additional personnel as may be necessary to carry out the prompt and timely preparation, modification, and review of applications under Foreign Intelligence Surveillance Act of 1978 for orders under that Act for foreign intelligence purposes.

(B) ASSIGNMENT.—The Attorney General shall assign personnel authorized by paragraph (1) to and among appropriate offices of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) in order that such personnel may directly assist personnel of the Intelligence Community in preparing applications described in that paragraph and conduct prompt and effective oversight of the activities of such agencies under Foreign Intelligence Surveillance Court orders.

(2) DIRECTOR OF NATIONAL INTELLIGENCE.—

(A) ADDITIONAL LEGAL AND OTHER PERSONNEL.—The Director of National Intelligence is hereby authorized such additional legal and other personnel as may be necessary to carry out the prompt and timely preparation of applications under the Foreign Intelligence Surveillance Act of 1978 for orders under that Act approving electronic surveillance for foreign intelligence purposes.

(B) ASSIGNMENT.—The Director of National Intelligence shall assign personnel authorized by paragraph (1) to and among the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), including the field offices of the Federal Bureau of Investigation, in order that such personnel may directly assist personnel of the intelligence community in preparing applications described in that paragraph.

(3) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—There is hereby authorized for the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) such additional staff personnel as may be necessary to facilitate the prompt and timely consideration by that court of applications under such Act for orders under such Act approving electronic surveillance for foreign intelligence purposes. Personnel authorized by this paragraph shall perform such duties relating to the consideration of such applications as that court shall direct.

(4) SUPPLEMENT NOT SUPPLANT.—The personnel authorized by this section are in addition to any other personnel authorized by law.

SEC. 13. DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) SYSTEM REQUIRED.—The Attorney General shall, in consultation with the Director of National Intelligence and the Foreign Intelligence Surveillance Court, develop and implement a secure, classified document management system that permits the prompt preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) before their submission to the Foreign Intelligence Surveillance Court.

(b) SCOPE OF SYSTEM.—The document management system required by subsection (a) shall—

(1) permit and facilitate the prompt submittal of applications to the Foreign Intelligence Surveillance Court under the Foreign Intelligence Surveillance Act of 1978; and

(2) permit and facilitate the prompt transmittal of rulings of the Foreign Intelligence Surveillance Court to personnel submitting applications described in paragraph (1), and provide for the secure electronic storage and retrieval of all such applications and related matters with the court and for their secure transmission to the National Archives and Records Administration.

SEC. 14. TRAINING OF INTELLIGENCE COMMUNITY PERSONNEL IN FOREIGN INTELLIGENCE COLLECTION MATTERS.

The Director of National Intelligence shall, in consultation with the Attorney General—

(1) develop regulations to establish procedures for conducting and seeking approval of electronic surveillance, physical search, and the installation and use of pen registers and trap and trace devices on an emergency basis, and for preparing and properly submitting and receiving applications and orders under the Foreign Intelligence Surveillance Act of 1978; and

(2) prescribe related training on the Foreign Intelligence Surveillance Act of 1978 and related legal matters for the personnel of the applicable agencies of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).

SEC. 15. INFORMATION FOR CONGRESS ON THE TERRORIST SURVEILLANCE PROGRAM AND SIMILAR PROGRAMS.

As soon as practicable after the date of the enactment of this Act, but not later than seven days after such date, the President shall fully inform each member of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on the following:

(1) The Terrorist Surveillance Program of the National Security Agency.

(2) Any program in existence from September 11, 2001, until the effective date of this Act that involves, whether in part or in whole, the electronic surveillance of United States persons in the United States for foreign intelligence or other purposes, and which is conducted by any department, agency, or other element of the United States Government, or by any entity at the direction of a department, agency, or other element of the United States Government, without fully complying with the procedures set forth in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or chapter 119, 121, or 206 of title 18, United States Code.

SEC. 16. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C and inserting the following new items:

''Sec. 105A. Clarification of electronic surveillance of non-United States persons outside the United States.

''Sec. 105B. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.

''Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.

''Sec. 105D. Oversight of acquisitions of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.''.

(b) SECTION 103(e) OF FISA.—Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or''; and

(2) in paragraph (2), by striking ''105B(h) or''.

(c) REPEAL OF CERTAIN PROVISIONS OF THE PROTECT AMERICA ACT OF 2007.—Sections 4 and 6 of the Protect America Act (Public Law 110–55) are hereby repealed.

SEC. 17. SUNSET; TRANSITION PROCEDURES.

(a) SUNSET OF NEW PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on December 31, 2009—

(A) sections 105A, 105B, 105C, and 105D of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) are hereby repealed; and

(B) the table of contents in the first section of such Act is amended by striking the items relating to sections 105A, 105B, 105C, and 105D.

(2) ACQUISITIONS AUTHORIZED PRIOR TO SUNSET.—Any authorization or order issued under section 105B of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2009, shall continue in effect until the date of the expiration of such authorization or order.

(b) ACQUISITIONS AUTHORIZED PRIOR TO ENACTMENT.—

(1) EFFECT.—Notwithstanding the amendments made by this Act, an authorization of the acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) made before the date of the enactment of this Act shall remain in effect until the date of the expiration of such authorization or the date that is 180 days after such date of enactment, whichever is earlier.

(2) REPORT.—Not later than 30 days after the date of the expiration of all authorizations of acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (as added by Public Law 110–55) made before the date of the enactment of this Act in accordance with paragraph (1), the Director of National Intelligence and the Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

(A) the number of targets of an acquisition under section 105B of such Act (as in effect on the day before the date of the enactment of this Act) that were later determined to be located in the United States;

(B) the number of persons located in the United States whose communications have been acquired under such section;

(C) the number of reports disseminated containing information on a United States person that was collected under such section;

(D) the number of applications submitted for approval of electronic surveillance under section 104 of such Act based upon information collected pursuant to an acquisition authorized under section 105B of such Act (as in

effect on the day before the date of the enactment of this Act); and

(E) a description of any incidents of noncompliance with an authorization under such section, including incidents of non-compliance by—

(i) an element of the intelligence community with procedures referred to in subsection (a)(1) of such section;

(ii) an element of the intelligence community with minimization procedures referred to in subsection (a)(5) of such section; and

(iii) a person directed to provide information, facilities, or technical assistance under subsection (e) of such section.

(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ''intelligence community'' has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. ___. CERTIFICATION TO COMMUNICATIONS SERVICE PROVIDERS THAT ACQUISITIONS ARE AUTHORIZED UNDER FISA.

(a) AUTHORIZATION UNDER SECTION 102.—Section 102(a) of the Foreign Intelligence Surveillance Act of of 1978 (50 U.S.C. 1802(a)) is amended by striking ''furnishing such aid'' and inserting ''furnishing such aid and shall provide such carrier with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met''.

(b) AUTHORIZATION UNDER SECTION 105.—Section 105(c)(2) of such Act (50 U.S.C. 1805(c)(2)) is amended—

(1) in subparagraph (C), by striking ''; and'' and inserting '';'';

(2) in subparagraph (D), by striking ''aid.'' and inserting ''aid; and''; and

(3) by adding at the end the following new subparagraph:

''(E) that the applicant provide such carrier, landlord, custodian, or other person with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met.''.

SEC. ___. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following new subsection:

''(e) STATUTE OF LIMITATIONS.—No person shall be prosecuted, tried, or punished for any offense under this section unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.''.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any offense committed before the date of the enactment of this Act if the statute of limitations applicable to that offense has not run as of such date.

SEC. ___. NO RIGHTS UNDER THE RESTORE ACT FOR UNLAWFUL RESIDENTS.

Nothing in this Act or the amendments made by this Act shall be construed to prevent lawfully conducted surveillance of or grant any rights to an alien not lawfully permitted to be in or remain in the United States.

The SPEAKER pro tempore. Debate shall not exceed 90 minutes, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 30 minutes and the gentleman from Texas (Mr. REYES) and the gentleman from Michigan (Mr. HOEKSTRA) each will control 15 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

□ 1230

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and include extraneous material for the RECORD on H.R. 3773.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 6 years ago the administration unilaterally chose to engage in warrantless surveillance of American citizens without court review. That decision created a legal and political quagmire. To fight terrorism and prevent another 9/11, we need to have an effective and legal system of intelligence gathering. That is what we are here to do today.

When that old scheme broke down, the administration then forced Congress to accept an equally flawed statute in August, the Protect America Act. The Protect America Act granted broad, new powers to engage in warrantless searches within the United States, including physical searches of our homes, computers, offices, libraries and medical records. There was a valiant fight against it, but we did not prevail.

Mr. Speaker, at this time I want to acknowledge the great work of the chairman of the Intelligence Committee, SILVESTRE REYES, for what he did, and on the Judiciary Committee I am quite proud of JERRY NADLER of New York, the chairman of the Constitution Subcommittee, and SHEILA JACKSON-LEE, the distinguished gentlewoman from Texas. Also the chairman of the Crime subcommittee, BOBBY SCOTT of Virginia.

The PATRIOT Act granted broad new powers to engage in warrantless searches within the United States. It included, as I said, physical searches of our homes, of our computers, offices, libraries, and even medical records. The law contained no meaningful oversight whatsoever and went around the FISA Court. It should not be made permanent. That is why we are here today with the RESTORE Act, to create a framework for legal surveillance that includes the FISA Court.

Careful consideration by the Judiciary and by the Intelligence Committees addresses the need for flexibility in intelligence gathering and delivers the ability to deal with the modern communications networks. More importantly, it is consistent with the rule of law, the Constitution, and our democratic values.

Let's be clear about how the RESTORE Act's ''basket'' court orders work. These orders are not individual warrants for Osama bin Laden or other terrorists. They allow surveillance of an entire terrorist group or other foreign power through a flexible court process. This act prohibits reverse targeting to engage in warrantless spying on Americans. In approving the order, the court must also approve the guidelines and procedures that will be used to protect the rights of Americans under the Constitution and under the Foreign Intelligence Surveillance Act.

When the intelligence community turns its attention to Americans at home, they will have to get a warrant. That isn't just good policy; this is the critically important fourth amendment in action. So RESTORE even brings the court into the emergency provisions. NSA must notify the court when they start emergency acquisition, and they must seek a court order within seven days. This is not a secret process. The court knows when it is started and is awaiting the application.

Mr. Speaker, the phone company can't even turn on the switch unless it has a certification from the government that they are actively seeking that court order. If the application is turned down, the surveillance shuts off, unless the court specifically stays their ruling, pending appeal. That appeal must be resolved within 45 days. These emergency authorizations are not a backdoor way to avoid court review. In fact, the court will be looking at the emergency from the very first day.

The bill also provides other critical safeguards: periodic audits by the inspector general; narrow scope of authority to security threats, not just anything. It protects privacy of Americans traveling abroad and, most important, sunsets the legislation in December of the year 2009 so that we can review it one more time.

Importantly, the bill has no retroactive immunity for telecommunications carriers whatsoever. Why? Because we have been refused the documents to determine whether retroactive immunity has any place or not. Interestingly enough, that was delivered to the Senate. They have the documents. We, begging, pleading, screaming, we don't have the documents. So no retroactive immunity. Until we receive these underlying documents, there is no way we can begin any consideration of that request. So the legislation before us today is a very, very important start-over improving the measure, the Protect America Act, that still exists.

Please join with me in a careful consideration of everything in this measure.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, the Democratic leadership calls the RESTORE Act of 2007 a compromise. Well, I agree. It compromises our national security.

Why do Democrats want to make it more difficult to gather intelligence

about terrorists after 9/11 than before 9/11? Since the Foreign Intelligence Surveillance Act was enacted 30 years ago, our terrorist fighting agencies have been able to gather information about terrorists without obtaining a court order. Why burden our intelligence agencies now? Why make it harder to find Osama bin Laden? Why protect terrorists?

This bill, for the first time, requires a court order to monitor foreign persons outside the United States. If Osama bin Laden makes a call and we don't know who it is to, a court order must be obtained. That takes many hours and could well mean we miss an opportunity to stop an attack.

The bill omits liability protection for telephone companies that provided the Federal Government with critical information after 9/11. These companies deserve our thanks, not a flurry of frivolous lawsuits.

The bill sunsets in 4 years, yet our agencies need certainty and permanence so they can develop new procedures and train employees.

Mr. Speaker, we don't need the RESTORE Act. We do need to restore the ability of the Federal Government to gather information about terrorists and to stop them.

Mr. Speaker, I yield 2 minutes to the minority whip, the gentleman from Missouri (Mr. BLUNT).

Mr. BLUNT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the law in place today, the law that we brought up to today's technical standards in August, is essentially the law that the Congress passed in 1978, a Congress that had a majority of Democrats in it. Jimmy Carter, President Carter, signed that bill, and it has worked for 30 years now.

The way this bill is drafted, the administration would be forced to seek warrants, as Mr. SMITH just said, for foreign targets in case they might call the United States. If Osama bin Laden calls the United States, we should know it. If Osama bin Laden calls and it turns out to be a call that didn't matter, there are ways to minimize that. In all likelihood, if Osama bin Laden called, it shouldn't be a matter that we shouldn't know about. If he calls to order a pizza and says ''deliver the pizza to cave 56 in Bora Bora,'' that is something we ought to know at that minute. We should not have to go to court to monitor these calls, just in case they call somebody in the United States.

Granting what in essence is de facto fourth amendment constitutional rights to noncitizens who are not in this country makes no sense at all. It is not the right direction. We need a permanent fix.

This bill does not contain, as my good friend Mr. CONYERS said, retroactive liability. We need to have liability for those companies that stepped up after 9/11 and immediately helped the country begin to monitor the things we needed to monitor. We still don't clarify in this bill what our intelligence agencies do.

This does not solve any problems. It creates problems. When you have a system that has worked in one way, and effectively, for 30 years, there is no reason to change that system. This bill makes needless, dangerous changes.

I hope we vote ''no'' on this bill today, and get down, as we did in late July, to the reality of what we have to do to defend the country.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 6 years after the tragic attacks of 9/11, Osama bin Laden remains at large. The minority whip may make light about ordering pizza, but the reality is we still haven't gotten Osama bin Laden and America faces a continuing threat from al Qaeda and other terrorist groups.

Just this week, Admiral Scott Redd, Director of the National Counterterrorism Center, said that the Iraq war has created a giant recruiting tool for al Qaeda. When asked if we are safer as a result of our invasion of Iraq, Admiral Redd said, ''Tactically, probably not.''

Mindful of this threat, our committees have drafted the RESTORE Act. I wish to thank Chairman CONYERS and members of both committees for their great work in drafting this legislation. The RESTORE Act arms our intelligence community with powerful new authorities to conduct electronic surveillance of terrorist targets around the world, but it also restores essential constitutional protections for Americans that were sharply eroded when the President signed the Protect America Act, or PAA, last August.

Some on the other side want to extend the PAA permanently. That would be a huge mistake. According to expert testimony we have received in our committee, the PAA authorizes warrantless domestic searches of Americans' homes, mail, computers and medical records, as the chairman of the Judiciary Committee observed earlier.

Although we don't have any information at this time that the Bush administration is using this authority in this way, we must guard against the possibility of abuse in the future. Our committee heard testimony that the PAA even allows spying without probable cause on our own soldiers deployed overseas talking to their families back home. That, Mr. Speaker, is wrong.

The RESTORE Act helps restore the balance between security and liberty. The RESTORE Act puts the FISA Court back in the business of protecting Americans' constitutional rights, after the President and Vice President put the court out of business 6 years ago.

Some will try to portray this bill as extending rights to terrorists. We have heard that this morning. That is absolutely false. This bill does not require individual warrants for terrorists such as Osama bin Laden. The bill does not extend fourth amendment rights to foreigners.

What the RESTORE Act does is allow ''block surveillance'' of terrorists overseas with speed and agility. And we will never go dark, because the bill includes an emergency provision that allows surveillance to continue for 45 days, even before the court approves the procedures to protect Americans.

This legislation will restore accountability and oversight in all three branches. It restores regular audits and reports by the Department of Justice, which will be reviewed by the Congress. It also requires an audit of the President's Domestic Surveillance Program and other warrantless surveillance programs.

Perhaps most importantly, it ensures that when an American is the target of surveillance, an individualized warrant is required.

Some of my colleagues on the other side prefer an approach that would allow the administration to police itself. This simply is unacceptable. If we have learned anything from the past 6 years, it is that unchecked executive power is a recipe for abuse and it has not made us safer.

□ 1245

Mr. Speaker, I have served my country as a soldier in combat in Vietnam, as a law enforcement professional on our southern border, and as a Member of Congress for the past decade. I have seen the great strength of our country; and in my view, the source of that great strength is our Constitution. The RESTORE Act provides tools to keep this Nation safe and upholds our Constitution and our laws. So I urge my colleagues to vote ''yes'' on the RESTORE Act.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the former chairman and current ranking member of the Homeland Security Committee, the gentleman from New York (Mr. KING).

Mr. KING of New York. I thank the ranking member for yielding and, Mr. Speaker, I rise today in opposition to this legislation.

Mr. Speaker, the United States has been at war with Islamic terrorism since September 11, 2001. This is a war which threatens our survival as a civilization, and it is a war where it is essential that we maximize the use of electronic surveillance which is one of the strongest weapons in our arsenal. It is a weapon which should not be trivialized, nor should the struggle be trivialized by using such terms as ''spying'' and ''snooping.''

It is important we keep in mind who the real enemy is. The real enemy is al Qaeda and Islamic terrorism, not the men and women of our own government who are working so hard to protect us.

Mr. Speaker, the Protect America Act, which was passed less than 3 months ago, updated FISA and struck the appropriate balance between protecting our citizens from terrorist attacks and protecting our civil liberties.

Tragically, today's bill, the RESTORE Act, marks an undeniable retreat in the war against Islamic terrorism. It limits the type of foreign intelligence information that may be acquired and actually gives foreign targets more protections than Americans get in criminal cases here at home.

By sunsetting this legislation in 2 years, the RESTORE Act fails to provide permanency and guidance to the intelligence community. The RESTORE Act also fails to provide legal protection and immunity to those American companies who answered the call of this administration and also answered the call of an administration which believed that this policy was legal, and not only this administration, but high-ranking officials from previous administrations, Democrat and Republican, who believed that these policies were legal and constitutional. There was no personal gain for these companies. To allow them to be subjected to lawsuits for answering the Nation's call in time of great peril is mean-spirited, vindictive and shortsighted.

Mr. Speaker, I strongly urge defeat of this misguided legislation.

Mr. CONYERS. Mr. Speaker, I am proud to recognize the chairman of the Crime Subcommittee, BOBBY SCOTT of Virginia, for 3 minutes.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding and appreciate his leadership in efforts to address warrantless surveillance under the Foreign Intelligence Surveillance Act, or FISA, and for introducing a bill that corrects many of the shortcomings of the bill that passed the House last August.

The RESTORE Act establishes a strong framework, much stronger than the administration's bill, to fight terrorism effectively, while providing reasonable safeguards to protect personal privacy. There are several important clarifications made in the bill.

One important change draws the appropriate distinctions based on physical location and types of targets. There has never been any controversy over the fact that surveillance directed at people, all of whom are overseas, you don't need a warrant in that situation.

The second is that the bill removes vague and overbroad language in the bill that passed last August that would allow wiretapping of conversations without a warrant if the communication was concerning a foreign target. That by its own wording suggests that if two citizens are in the United States talking about someone overseas, you could wiretap their communications without a warrant. The bill before us makes it clear that the persons involved in the conversation must be overseas, not just that the subject of the conversation must be overseas.

Third, the RESTORE Act goes a step further than the administration's bill and only allows expanded wiretapping authority in cases involving foreign intelligence unless it relates specifically to national security, as opposed to the overexpansive nature of foreign intelligence. Foreign intelligence can include anything, a trade deal or anything of general foreign affairs activities. If you are talking about national security, let's talk about national security.

Finally, the RESTORE Act was made even stronger in the committee by requiring the Department of Justice in its application to the court to specify the primary purpose of the wiretapping. Under FISA, when an agent wanted to obtain a warrant, he had to certify the purpose of the wiretap. The standard was altered in the PATRIOT Act which says it only has to be a significant purpose.

We have to put this change in context because the Department of Justice has not credibly refuted the allegations that some U.S. Attorneys were fired because they failed to indict Democrats in time to affect an upcoming election. So if the Department of Justice wiretapped someone when foreign intelligence is not the primary purpose, you have to wonder what the primary purpose is. This bill would require the administration to reveal the true purpose of the wiretap.

Mr. Speaker, in the fight against terrorism, we do not have to sacrifice constitutional protections or trust this administration to secretly protect the rights of Americans without public accountability. It is important to note that everything that the administration can do in its own bill it can do under this bill. We just require them to get a warrant before they do it or get a warrant after they do it if they are in a hurry, but they can wiretap and get the information. We just provide a little modicum of oversight to ensure that the laws are being obeyed.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FORBES), the ranking member of the Crime, Terrorism and Homeland Security Subcommittee of the Judiciary Committee.

Mr. FORBES. Mr. Speaker, as you listen to this debate and those watching at home listen to it, the only thing that they hear are Democrats saying one thing and Republicans saying another thing. They don't know who to believe. They listen to the debate and they hear hatred of the Presidency and hatred of Republicans. But, Mr. Speaker, we just invite you today, take a moment and a breath and put all of that hatred on the shelf for just a second, and to remember that the Director of National Intelligence, not an appointee from President Bush but from President Clinton, has stated that their approach will be devastating to the intelligence-gathering capability of the United States.

Mr. Speaker, here are the facts that we know. In the late 1990s, we cut intelligence. Then we had 9/11 where we had the worst terrorist attack to ever hit our shores. Since that time, regardless of who did it and deserves the credit, we have not had a major terrorist attack hit the United States, and now we are trying to repeat the cycle and cut intelligence-gathering capability again. We all know what is going to happen if, and some would say when, another terrorist attack hits. We are going to bring law enforcement in and we are going to point our finger at them and say: Why didn't you stop it?

Mr. Speaker, just recently we had one of our NFL football coaches get in trouble because he was trying to steal the signals of an opposing team. Everyone argued and agreed that wasn't fair. And they were right; but that was a game. Mr. Speaker, in this particular situation it is not a game. We don't want a fair fight. We want to steal every signal we can from enemies who are trying to harm this Nation, and we want to know what they are doing before they do it so we can protect and defend this country.

Mr. Speaker, I just invite us to take the hatred off the shelf, take the rhetoric off the shelf, and to exchange it for ration and reason so we can do what we need to do to gather the intelligence to keep our people safe.

Mr. REYES. Mr. Speaker, it is my pleasure to yield 1½ minutes to the gentleman from Iowa (Mr. BOSWELL), a fellow Vietnam veteran, a member of the House Intelligence Committee.

Mr. BOSWELL. Mr. Speaker, first I support this bill. It is a good bill, and it protects the Constitution.

I would like to speak principally to my colleagues who, like me, are concerned about what the bill does and the fact that it does not address fully the issue of carrier liability. As you know, the administration and telecommunication companies have requested that we provide them with immunity from lawsuits or prosecutions arising out of information and assistance they may have provided to the intelligence community.

Now, we don't precisely know what information they have provided. We don't know what they were told by the administration about the legality of what they were doing. I hope and believe those companies acted in good faith with patriotism. They were trying to do their part for national security, and I think they deserve our appreciation. I take seriously their concerns that they might be subject to liability.

That being said, I don't believe it should be the responsibility of the telecommunications companies to prove that they provided the information in a legal way if the Federal Government fails to meet the burden of proof that the demand or request for information is brought forth in a legal manner. If that burden of proof is not met, it should be the government that should be held primarily accountable.

I believe that eventually we should be able to take care of any company who acted in good faith and cooperated in the name of protecting our Nation.

No one who acted out of good faith with a desire to protect America should be punished. But we must know what brought forth their action, and under what circumstances, and what pressure, if any, they acted. As this process moves forward, I expect to get more information from the administration on their generation of the demands or requests for information. Support the bill.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to my colleague and the former district judge from Texas (Mr. GOHMERT), who is also the deputy ranking member of the Crime, Terrorism and Homeland Security Subcommittee of the Judiciary Committee.

Mr. GOHMERT. I thank the ranking member.

I appreciate Chairman REYES' service to this country. I believe people on the other side of the aisle mean well when they say they want to protect the Constitution. The problem is this extends the Constitution beyond America to our enemies on foreign soil who cut off heads of Americans. That's just the way it is. It does that.

Now, we keep hearing across the aisle: This has nothing to do with foreign-to-foreign calls; it has nothing to do with foreign terrorists on foreign soil calling foreign terrorists, and it says that in the bill. You don't have to worry about that. You don't need a warrant for that.

The trouble is there is no conceivable time that an honest intelligence gatherer overseas can swear that a foreign terrorist that he wants to surveil will never under any circumstances call the United States. Since he can't swear to that and since there is a chance, especially since this law is public and the terrorists will know all they need to do is call America, order flowers, call time and temperature, they have made a call on American soil and they come within the requirement of getting a court order. It is very clear.

This doesn't extend the Constitution in a way that it should be on American soil. It protects enemies. I know people on the other side, you just want to protect civil liberties, but what scares me is what will happen when a terrorist attack in the nature of 9/11 comes again. People will rush to take away civil liberties, and people will voluntarily give up civil liberties for protection, liberties that were so hard fought.

So for those who are really going to be protected, I don't understand the concern. This is going to protect also Americans who get calls from foreign terrorists on foreign soil. That is what this is really going to do.

I don't think it is too much in the interest of America, tell your American friends to tell their terrorist friends on foreign soil, don't call me, use some other means of communication.

Mr. CONYERS. Mr. Speaker, I am pleased now to recognize the gentlewoman from California (Ms. HARMAN) whose experience in intelligence matters and FISA in particular are well known, and I yield to her 2½ minutes.

□ 1300

Ms. HARMAN. Mr. Speaker, I thank Chairman CONYERS for yielding to me and commend him, Chairman REYES, and others for their work on this bill.

Though I no longer serve on the Intelligence Committee, I have followed this issue with intense interest. This bill contains many provisions that I and others authored over recent years. It is a strong bill and I strongly support it.

It amends FISA to permit more speed and agility in the effort to conduct surveillance of those who would do us harm, but it also provides more resources in a court-approved framework to assure that the constitutional rights of Americans are protected.

I continue to follow the intelligence in my role as Chair of the Homeland Security Intelligence Subcommittee, and threats against our homeland are real. Westerners are training in al Qaeda camps in the tribal areas of Pakistan. Europe, especially Britain, may experience more attacks. Plots have recently been foiled in Denmark and Germany. We helped Britain disrupt the so-called ''liquid bomb plot'' in August of 2006, a plot that could have killed more Americans than were killed on 9/11 as they flew on U.S.-bound airlines from England.

Mr. Speaker, all Members want to protect America. All Members want to protect America. So it deeply saddens me that this is yet another partisan debate. It could have been otherwise.

For several weeks, PETE HOEKSTRA, who chaired the Intelligence Committee when I was privileged to serve as ranking member, and I tried to fashion a bipartisan bill. Our list of principles could, I believe, have garnered broad support in both caucuses and led to a veto-proof majority in this House.

Americans want Congress on a bipartisan basis to assure we disrupt plots to harm us and protect our Constitution. We could do both and we must do both. This is a strong bill. It does both. Vote ''aye.''

Mr. EVERETT. Mr. Speaker, I rise today in strong opposition to the RESTORE Act, which reauthorizes the Foreign Intelligence Surveillance program. As a Member of the Select Committee on Intelligence, I am deeply troubled that the majority has determined to handcuff the ability of the Intelligence Community (IC) to collect foreign intelligence information.

Forgive me for stating the obvious, but ladies and gentleman, we are at war. We should be helping the IC in their efforts to protect Americans and fight the war on terror; this legislation needlessly ties our hands in collecting foreign intelligence information.

Here are a few of the problems with this bill: No liability protection for the telecommunications companies who have responded to the IC's call for help since the 9/11 attacks; extends constitutional (4th Amendment) protections for terrorists by requiring FISA court approval to monitor individuals outside the U.S.; new and cumbersome FISA court guidelines for IC operations; Justice Department audits of IC activities and operations; onerous and duplicative reporting requirements by the DNI; and the list goes on . . . .

Mr. Speaker, under this legislation, the Majority has made it clear that our Intelligence agencies should be guided by the tenants of the American Civil Liberties Union (ACLU) when monitoring terrorist activity.

This policy is reckless and I urge a ''no'' vote.

Mr. BACA. Mr. Speaker, I rise today to ask for support of the RESTORE Act. It provides important tools to support U.S. intelligence gathering efforts and protects against terrorists. And it does so while safeguarding Americans' civil liberties.

I hope that as the legislative process plays out, the issue of carrier immunity is dealt with in a manner that will facilitate cooperation. Obtaining intelligence to protect our country against terrorists is the ultimate goal and this bill does this in a fair and balanced manner. Innocent Americans will have stronger protections and the intelligence needed to protect our country will not be compromised. Accountability is always a good thing.

We will have much needed congressional oversight, compliance reports from the Attorney General and audit reports by the Inspector General of the Department of Justice.

The RESTORE Act is a great balance and a positive move in the right direction.

Please support this important legislation.

Mr. CHANDLER. Mr. Speaker, while I am pleased to stand here today and support the RESTORE Act of 2007 because I believe it is critical as part of our nation's defense, I urge us to work together in the coming weeks to end the uncertainty facing some of our corporate citizens in dealing with the threat posed by Islamic fundamentalists.

Particularly, I am referring to our nation's telecommunications carriers, companies that historically have been a critical piece of our successful national security apparatus. These U.S. companies, who combined employ well over half a million Americans, should be treated with appreciation for the cooperation they display in the effort to keep our people safe.

In the confusion and muddied backdrop of the debate, what has clearly been left aside is the longstanding and consistent policy of Congress and the courts that governs the way these companies may lawfully provide assistance to law enforcement and intelligence agencies. This policy is that telecommunications carriers are authorized to assist government agencies in a wide variety of circumstances; public policy encourages such cooperation; and, consistent with that policy, when a carrier cooperates in good faith with a duly authorized request for assistance, the carrier is immune from liability to third-parties. In the interest of our nation's security, these carriers should continue to have immunity when cooperating in good faith.

We must work together over the coming weeks to clarify the role of carriers in this debate, and specifically offer the appropriate path to immunity when such highly sensitive matters are involved. Telecommunications carriers are nothing less than patriotic citizens fulfilling their role in our global struggle against terrorism.

The SPEAKER pro tempore. Pursuant to section 2 of House Resolution 746, further proceedings on the bill will be postponed.